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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

No. ...507

CALIFORNIA DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT; GILBERT SHEFFIELD as Director of the California Department of Human Resources Development; ESTHER PERRY, as Manager of the Pittsburg, California branch of the California Department of Human Resources Development; RAMON L. JIMENEZ as Manager of the Richmond, California branch of the California Department of Human Resources Development,

Appellants,

against

JUDITH JAVA and CARROLL H. HUDSON, individually, on behalf of themselves and all others similarly situated,

Appellees.

BRIEF OF THE STATE OF NEW YORK AS *AMICUS CURIAE* IN SUPPORT OF THE JURISDICTIONAL STATEMENT

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Interest of *Amicus*

The State of New York administers, through its federally approved Unemployment Insurance Law (New York Labor Law §§ 500-635), probably the largest unemployment insurance program in the country. This program would be profoundly affected if the decision of the court below were upheld. Because the decision below has such vast impli-

cations for the State of New York, we file this brief as *amicus curiae* pursuant to Rule 42(1) of the Revised Rules of this Court and urge this Court to note probable jurisdiction of this appeal.

Statement

A three-judge district court sitting in the Northern District of California has granted a preliminary injunction finding Calif. Unempl. Ins. Cde. § 1335 "defective on both constitutional and statutory grounds" because it does not provide for a hearing prior to termination of unemployment insurance benefits. The decision involves two persons who were declared eligible for unemployment insurance benefits and payments to them were commenced. However, their employers appealed the eligibility determinations and, pursuant to California law, payments were ceased pending the appeals. The District Court found the case to be "indistinguishable" from the decision of this Court in *Goldberg* v. *Kelly*, 397 U. S. 254, and held that termination without a hearing violated both the statutory requirement that payments be made "when due" (42 U.S.C. § 503[a][1]) and due process considerations set forth in the *Goldberg* v. *Kelly* case.

ARGUMENT

The holding of the District Court will have a substantial adverse impact upon the administration of unemployment insurance programs throughout the country.

A

Although the decision below deals factually only with cases in which the employer appeals a finding of eligibility for unemployment insurance benefits, its reasoning and

language go much further. The District Court found the California statute defective for failure to provide a "pre-termination hearing". Unemployment insurance offices in New York, as in California, the District of Columbia, and most other states in the Union, terminate unemployment insurance benefits for a variety of reasons. Thus, benefits may be terminated because an employer appeals the determination of eligibility or because information comes to the unemployment insurance office which was unavailable at the time of the initial determination but which would render the applicant ineligible. Payments may be terminated because the recipient fails to maintain his eligibility by being ready, willing and able to work or by failing to report to his claims office. All of these situations might be encompassed within the holding below.

Indeed, the decision below has already had substantial effect. There is presently pending in the United States District Court for the Southern District of New York a suit based on the decision below and the decision of this Court in *Goldberg* v. *Kelly, supra,** challenging the New York State policy of terminating benefits following a statutory re-determination (New York Labor Law § 597[3]), that a claimant who was initially determined to be eligible for benefits and to whom some payments had been made was, in fact, not eligible. *Torres* v. *New York State Department of Labor,* S.D.N.Y. 70 Civ. 2048. In *Torres,* notice of the claim from the insurance office to the employer first went astray and the correct information respecting

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* New York, represented by its Attorney General, while a party to the action in the District Court, did not join in the appeal because of its limited applicability to termination of welfare. The untenable extension of the *Kelly* case to the area of unemployment insurance would create monumental havoc. No basis for such extension would appear to be justified by the opinion of this Court. Despite this the *Kelly* case is being applied by the courts as insisting upon adversary hearings prior to cessation of any benefit so long as any governmental interest in some way appears.

the reason for termination of employment did not reach the unemployment office before the initial determination of eligibility was made. When the information was received and investigated, payments were terminated. The single district judge in *Torres* has held, in a decision based in part on the decision in this case, that the complaint presents a substantial federal question with respect to whether payments may be terminated without a prior hearing. *Torres* v. *New York State Department of Labor*, July 21, 1970 (LASKER, J.). The complaint in *Torres* has recently been amended to include a plaintiff to whom payments were discontinued because of his unavailability for employment.

B

In addition to the multiplicity of fact patterns which the decision below has already been held to affect, its most devastating impact could be to delay all payments of unemployment insurance benefits. In New York, in 1969, some 790,000 original claims for unemployment insurance benefits were filed. The primary object in processing all such claims is expedition. By statute, an initial determination should be made within one week of the application. New York Labor Law § 597(2). Thus, payments to eligible claimants can begin as promptly as possible. New York, like California, the District of Columbia, and other states in the Union, also provides as a concomitant of prompt commencement of payment, that, if, for any reason it is determined that payments should not have been commenced, they must be stopped. Without this re-determination mechanism, it could be necessary to have full scale evidentiary hearings not only before payments are terminated but before they are begun. This would mean that payments would inevitably be delayed and that the cost of administering the unemployment insurance program would

be enormously increased. This would be true whether the request for re-determination or for a hearing came from the employer who has a direct pecuniary interest in the payment of funds (see jurisdictional statement) or whether any initiative for re-determination came from the agency itself in its capacity as administrator of the unemployment insurance fund. Certainly, a pre-eligibility hearing would comply with the letter of due process but it would violate its spirit and work unnecessary hardship on the vast majority of claimants for unemployment insurance.

C

The instant case also raises serious questions concerning the scope of the decision of this Court in *Goldberg* v. *Kelly*, 397 U. S. 254. The District Court found that decision "indistinguishable" from the instant case. However, as the jurisdictional statement points out, there are significant differences between unemployment insurance and welfare benefits and the administration of both programs which make it imperative that this Court reject the extension of *Kelly* made by the court below. Not only is *Kelly* distinguishable in the context of determination of initial claims for unemployment insurance benefits, but it is also distinguishable from the situation where a claimant becomes ineligible by virtue of his failure actively to seek work or to report to his claims office. For, unlike the situation in welfare cases, unemployment eligibility is re-determined on a week by week basis since each claimant must be ready, willing and able to work each week and, of course, must not have become re-employed. It would, of course, be impossible to hold hearings each week on the eligibility of each claimant for the past week. (In New York in 1969 some 7,880,000 weeks of benefits were paid.) Accordingly, these continued claims are promptly determined either in favor of or against the claimant with the right to a subse-

quent hearing. This procedure too protects the vast majority of claimants and delays only a very few. The implications of the decision below would delay all claims.

CONCLUSION

For the foregoing reasons and for the reasons stated in the jurisdictional statement, it is respectfully requested that this Court note probable jurisdiction and grant plenary consideration to the instant appeal.

Dated: New York, New York, August 7, 1970.

Respectfully submitted,

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